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Session C5 - Regulatory Hurdles and Inconsistencies of Dam Removal

Vince Humenay

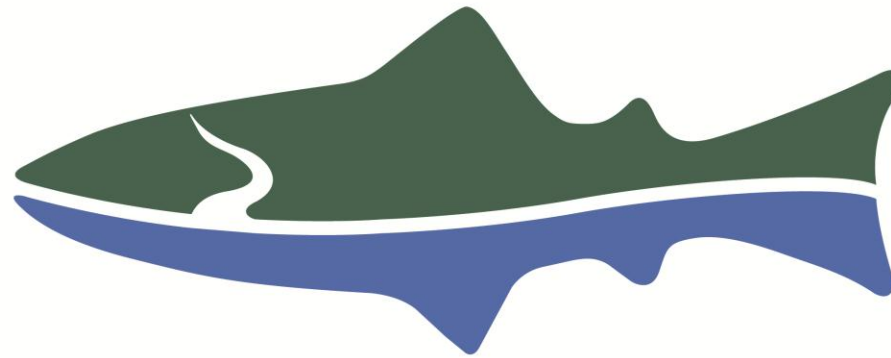
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HEADWATER PARTNERS, LLC

Regulatory Hurdles and Inconsistencies

**Vince Humenay
Headwater Partners, LLC**

Outline

- **Permitting in General**
- **Specific State Permitting**
- **Pennsylvania's regulatory process**

Regulatory 101

- Section 404 of the Clean Water Act regulates the discharge of dredged or fill material in waters of the U.S.
- Clean Water Act Section 401 requires a State Water Quality Certification (SPGP)

Other Potential Federal Permits

- Rivers and Harbors Act, Section 10 requires a permit for activities in Navigable Waters
- FERC license – if the dam is a hydropower regulated by the FERC
- National Environmental Policy Act – NEPA review. If required by a Federal agency.

Other Basic permitting requirements

- Endangered Species Act – consultation with USFWS
- National Historic Preservation Act – to determine projects impacts on historic properties.

Nationwide – 27 Permit

- Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- Still need 401 WQC from the state.

Connecticut

- Applicant must apply for a Dam Safety Permit with CT DEEP
- **DEEP reviews permit for safety, wetland issues, and fisheries considerations**
- CT DEEP will issue a Notice of Tentative Determination and distribute to fisheries and wetland agencies and the planning and zoning board of the local government

New Hampshire

- Permit from NHDES wetlands bureau
- **No dam permit, but Dam Bureau does comment on the application.**
- Applicants must complete a Standard Dredge and Fill application and show coordination from SHPO and US ACOE.

New Jersey

- **Dam Safety Construction Permit**
- **Freshwater Wetlands Permit**
- **Waterfront Development Permit**
- **Water Lowering Permit**
- **Soil conservation district plan certification**

New York

- Applicant must submit a Joint Application for Permit
- **EA Form or Environmental Impact Statement.**
- NY DEC will distribute the Joint Permit Application to review agencies.

Why is Dam Removal Working So Well in PA?

- **DEP has adopted regulations to facilitate and streamline the permitting process for restoration activities**
- **Available Funding**
- **Benefits to both the dam owner and the environment**

Economic

- Many dams no longer serve the function for which they were constructed
- On average, it costs 3 to 5 times more to repair a dam once than remove it
- Fish passage facilities average \$45,000/vertical ft.
- Removal eliminates owner liability and long-term maintenance and operation costs



Environmental

- Restores the physical, chemical, and biological processes inherent to rivers
- **Restores stream habitat and aquatic organisms**
- Permits upstream/down-stream movement of biological organisms

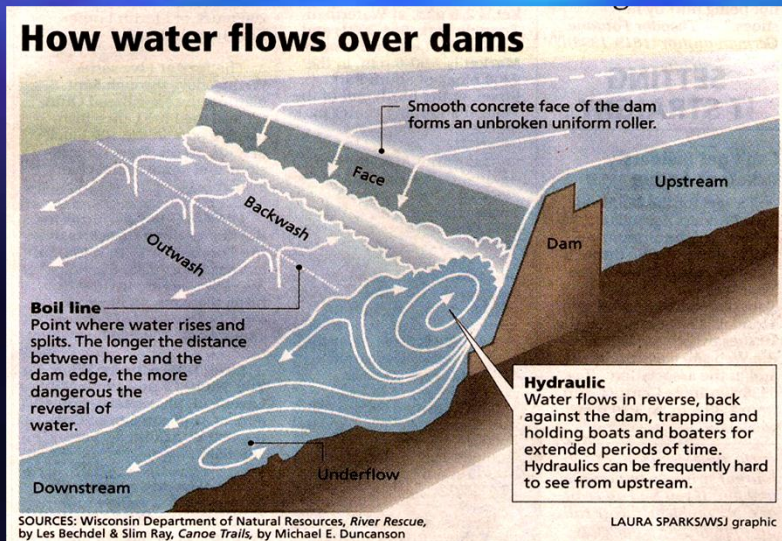


Cabin Hill Dam, Centre Co., PA

Public Safety and Protection of Property



- **Dams are inherent safety hazards and attractive nuisances**
- **Not all dams serve a flood control Function – in some cases they promote upstream flooding**



Dam Removal Process

DEP Fact Sheet
Commonwealth of Pennsylvania • Department of Environmental Protection • <http://www.dep.state.pa.us>

BUREAU OF WATERWAYS ENGINEERING

BREACHING OF DAMS IN PENNSYLVANIA

DEP's Division of Dam Safety has adopted a procedure to facilitate the breaching of dams in Pennsylvania. The procedure described below has been adopted to make it easier and more affordable for a dam owner to remove an unwanted and often unsafe dam. This will aid in the protection of public health, safety, welfare and property downstream, as well as the re-establishment of streams to their free flowing natural state. In order to qualify for this procedure, the proposed breach plan essentially must restore the stream to its natural free flowing state through the impoundment area and dam footprint area.

STEP 1

The dam owner or his/her engineer should submit a plan of the proposed breach to DEP. The plan should include a plan view and cross-sections, as necessary, to complete the project. The plan should also include dimensions, channel lining specifications and the proposed location of the spoil area.

STEP 2

The Division of Dam Safety will do the following:

- Review the plan for proper breach sizing, re-establishment of the stream through the project area, appropriate channel protection and properly located spoil areas.
- Conduct an environmental assessment for the project. If major environmental impacts are found to result from the proposed breach, a dam permit will be required to provide a more comprehensive review process.
- Coordinate the review of the proposed dam breach with the Pennsylvania Fish and Boat Commission and the appropriate Corps of Engineers' district office.

STEP 3

Upon acceptance of the plan by DEP, the project will be authorized under the waiver provision of Section 105.12 (a) (16) as a restoration of a stream to its natural free flowing condition. The following conditions will be stipulated:

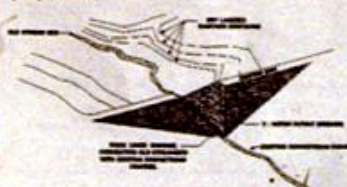
- Approval of an Erosion and Sedimentation Control Plan by the appropriate county conservation district.

STEP 4

DEP's regional office shall conduct a final inspection of the site.

For more information contact:

Department of Environmental Protection
Bureau of Waterways Engineering
Division of Dam Safety
P.O. Box 8554
Harrisburg, PA 17105-8554
(717)787-8568



This fact sheet and related environmental information are available electronically via internet. Access the DEP website at <http://www.dep.state.pa.us> (choose Information by Subject/Water Management/Waterways Engineering/Dam Safety).

Commonwealth of Pennsylvania
Tom Ridge, Governor

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Department of Environmental Protection
James M. Selt, Secretary
2008-03-20/010208 1/07

Recycled Paper

- On-site pre-application meeting
- Submission of restoration plan
- Published in the PA Bulletin
- Environmental assessment conducted by DEP
- Project authorized under the waiver provision of 25 Pa. Code, Section 105.12
- Federal 404 authorization

Permits Required in PA

1. Authorization letter from DEP Dam Safety (restoration waiver)
2. Federal Authorization (PAGPGP-4, Individual Permit or Nationwide-27)
3. Drawdown Permit through Pennsylvania Fish and Boat Commission
4. Erosion and Sedimentation Control Plan from DEP Dam Safety
5. Dam Breach Completion Certification

Final Thoughts

- Pre-application meeting with all regulatory agencies is important
- **One point of contact/coordinator**
- Dam Removal is restoration – it is unique and needs a unique permit process
- **It is ok to see heavy equipment in the streams during dam removal**

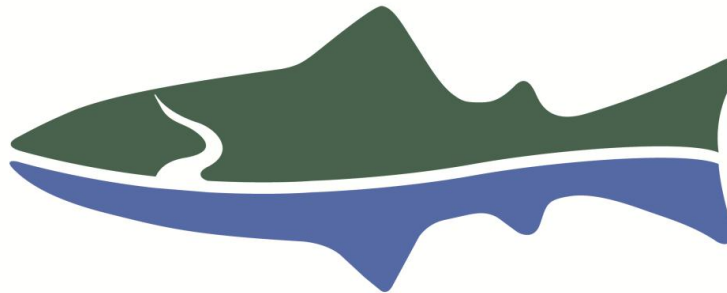
Questions

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